

REMARKS

We assume that the June 17, 2004 paper has been entered, there being no indication to the contrary. The paper mailed October 5, 2004 holds that the amendment filed June 17, 2004 is not fully responsive because it does not properly indicate the status of certain claims. Specifically, it holds that claims 16, 23-25, and 28-31 are withdrawn from consideration as drawn to a non-elected species, as the result of an election without traverse, and should have been so identified. (It is not clear to us why the Examiner could not have just noted the status of these claims and proceeded with the examination on the merits of the case.) Since these claims stand withdrawn, we have revised the claims list to so indicate. We believe this satisfies the concerns expressed in the October 5 paper.

We turn next to the merits of the Examiner's position on the restriction requirement. It is true that the response to restriction requirement filed October 29, 2003 by predecessor counsel did not traverse the restriction per se. However, it did traverse the restriction's identification of claim 1 as the only claim generic to all species.

In the election, predecessor counsel elected GalNAC from group A, Peptide (either L or D amino acids) from group B, and Natural as recited in claim 20 from group C, and asserted that the claims readable thereon (i.e., readable on the combined election from A-C) were claims 1-14, 17, 19-22, 26, 27, 30 and 31. (The paper did not explicitly address the issue of which claims were generic if, say, the group A species restriction was withdrawn and the others were maintained. There was no need to address that issue until the Examiner indicated a willingness to withdraw one of the species restrictions.)

In the office action mailed December 17, 2003, the PTO took the position that only claims 1-12, 14, 17, 19-22, 26 and 27 read on the elected species, i.e., it disagreed with Applicant as to

the status of claims 13, 30 and 31. Claim 13 has been cancelled, and so far for that claim it is a moot point.

The Examiner has not explained why claims 30 and 31 lie outside the elected species. The "structures associated with malignant cell antigens" (31) are clearly "natural" (group C), and at least some of these structures comprise GalNAc (group A). By virtue of base claim 1, as amended June 17, the structures are attached to peptides (group B).

Claim 30 as filed is inaptly worded, because it implies that the carbohydrate structures are derived from the bacterial adhesins, when the intent was that they are derived from the carbohydrate structures of the human glycoantigens which are recognized by those adhesins. Claim 30 has been amended accordingly. So amended, it too falls within the elected species.

Finally, we have recently taken the position that claims 23, 24, 25 and 28 are generic to the elected platform (peptides) (see page 9 of June 17, 2004 amendment). The Examiner has failed to explain why this is not the case.

Species 1, as elected, actually includes all of species 3, as well as the linear peptides in species 5, the cyclic peptides in species 6, the fluorescently labeled peptides in species 7 and the lipidated peptides in species 8. Nothing in the definition of species 1 excludes coverage of all or part of other species. Indeed, if species 1 were to be interpreted as excluding both the linear molecules of species 5 and the cyclic molecules of species 6, what would be left?

We agree that the issue concerning claims 23, 24, 25 and 28 was not specifically raised by predecessor counsel and hence it could be argued that we don't have a right to petition against that aspect. However, we believe we do have the privilege of requesting reconsideration of the withdrawal of claims 23, 24, 25 and 28 (as well as 30 and 31) from consideration in view of

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the plain meaning of "peptides" in elected species 1.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

By:

Iver P. Cooper
Reg. No. 28,005

624 Ninth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 628-5197
Facsimile: (202) 737-3528
IPC:lms
G:\ipc\a-c\biom\Koganty8a\ptosupplamend.wpd